



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-115
Regulation title	General VPDES Permit for Seafood Processing Facilities
Action title	Amend and Reissue the Existing Regulation
Final agency action date	December 9, 2010
Document preparation date	October 14, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This rulemaking is to reissue the general permit that expires on July 23, 2011. It will continue the existence of the general permit that establishes limitations and monitoring requirements for wastewater discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. Substantive changes proposed are: added two reasons authorization to discharge cannot be granted, added language to allow for 'administrative continuances' of coverage, added three new special conditions, updated the storm water pollution prevention plan section and modified due dates in the conditions applicable to all permits section.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Water Control Board adopted the regulation at its meeting on December 9, 2010.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

Sections 9VAC25-115-20 Purpose, 9VAC115-30 Authorization to discharge, 9VAC25-115-40 Registration statement, and 9VAC25-115-50 General permit were revised based on comments and recommendations of the Attorney General Office. These changes are editorial in nature to clarify statements or remove redundant information.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Joseph Restein III	Request DEQ to reduce the renewal paper work for reissuance of the GP by ending the need for the registration statement.	DEQ investigated whether this issue and determined that the registration statement was needed for this category of discharges to track and maintain updated information for this category of discharges. Staff did improve and clarify some of the instructions for the form.

Other public comments received were not relative to the development of the general permit regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

10	N/A	Runoff coefficient definition exists and TMDL definition does not exist.	Runoff coefficient" was deleted since that term is not used in the permit, moved the exception for mechanized clam facilities to the end of the first sentence for readability and added a definition of Total Maximum Daily Load (TMDL) because it is used in section 30.
20 A	N/A	Sentences exist but are redundant.	Deleted the last two sentences because the definition of seafood processing facility excludes mechanized clam facilities so the exclusion here is redundant. The "no discharge is allowed" sentence is either redundant to or a paraphrase of the prohibitions in §301 Clean Water Act and State Water Control Law §62.1-44.5 (Attorney General Office (AGO) comment)
20 C, 40, 50	N/A	Old effective dates from previous permit.	Effective dates changed for reissuance throughout regulation
30 A and B	N/A	.	Reformatted to match structure of other general permits being issued at this time.
N/A	30 B 4 and 5	None	Added two additional reasons authorization to discharge cannot be granted per EPA comments on other general permits issued recently. Therefore, an owner will denied authorization when the discharge would violate the antidegradation policy or if additional requirements are needed to meet a TMDL
N/A	30 C	None	Added the statement <i>Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation</i> per AGO comments on other GPs recently to recognize there are some exceptions to compliance with the CWA as stated in the permit regulation.
N/A	30 D	None	Added language to allow for 'administrative continuances' of coverage under the old expired general permit until we get the permit issued or we deny the registration if the permittee has submitted a timely registration and is in compliance.
40 A	N/A	Existing individual and general permittees must submit registrations 180 prior to expiration.	Reformatted to match structure of other recent general permits. Revised deadline for existing facilities currently holding an individual VPDES permit to say they must notify us 210 days prior to expiration of individual permit. This time period is set so that the regional office has 30 days to determine if the permittee is authorized for coverage under the general permit and if they are denied authorization the permittee still has 180 days to submit his permit application for an individual permit (AGO comment). Revised existing facility covered under existing general permit to submit registration prior to June 24, 2011 (which is 30 days prior to expiration). This is allowed for general permits by 9VAC25-31-100 C of the permit regulation. This is more in line with existing agency policy. Added a statement that allows for late registrations but says that authorization to discharge will not be retroactive. The agency prefers to allow for late registrations but then the permittee needs to know that in the interim they are not covered and the agency could take enforcement action.
40 B	N/A	Email address and computer maps not listed for registration statement information.	Added email address, allowance for computer maps to registration statement and a few other minor clarifications.
50 Part I. A	N/A	Policies that prohibit seafood process discharges are reasons for not granting authorization. Some limits are listed as three significant digits.	Deleted the word "policy" in the opening paragraph exception sentence as it would be difficult to enforce a prohibition created by policy (AGO comment). Adjusted the limits from three to two significant digits for BOD, TSS and Oil and Grease because this didn't match the Federal Effluent Limit Guidelines or current agency guidance for use of significant digits.
50 Part I B 2			Deleted "including sodium tripolyphosphate" in the no other chemicals shall be added special condition because it was not clear whether the permittee can list it and then discharge it (AGO comment). They probably

			can, but the registration has to be accepted, which is after the toxicity of the listed chemical is considered. Since, it caused confusion staff decided to just delete the example and let the special condition stand on its own.
	50 Part I B 7	None	Added #7 Compliance Reporting Special Condition to match similar language going into other recent general and individual permits. The condition defines quantification levels, how to treat results < QL and rounding rules. This helps to ensure more consistent compliance reporting.
	50 Part I B 8	None	Added #8 special condition - <i>The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260</i> which is a general requirement to meet water quality standards to match similar language going into other recent general permits.
	50 Part I B 9	None	Added #9 special condition - <i>If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least 30 days prior to commencing operation of the new process.</i> This requirement is also in the Deadlines for Registration Statement section 40, but needs to be in the permit also so the permittee knows about the requirement.
50 Part II	N/A	Observation of storm water BMPs is not addressed.	Added revisions for Storm Water Pollution Prevention Plans based on EPA's multisector general permit. These changes are going in all general permits. They are all generally clarifications. The maintenance requirements in III C have a new requirement that storm water best management practices shall be observed during active operation. This was a suggestion from the stormwater technical advisory committee.
50 Part III M	N/A	Must submit a new registration statement 180 days prior to expiration.	Duty to reapply- Must submit a new registration statement 30 days prior to expiration to reapply. This matches the registration deadlines in section 40 and better conforms to existing agency practices.
50 Part III Y	N/A	Automatic transfers must occur 30 days in advance of transfer.	Transfer of permits – Revised to say automatic transfers can occur within 30 days of transfer rather than 30 days in advance of transfer. We have been told by TAC members that notification of an ownership transfer cannot occur in advance. Our regional office staff has also stated this advance transfer notification is unnecessary and we should be able to accept a transfer notification at any time.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The agency is proposing to move deadlines for submittal of registration statements and ownership changes from 180 days to 30 days. This is a less stringent deadline for existing permittees but still within existing agency practices and implementation guidance. The proposal also includes an allowance for

continuance of permit coverage in instances where a permittee has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally discharge if the permit is not reissued on time by the Department.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulation will have no direct impact on the institution of the family or family stability.